79-1350
No.

Supreme Court, U. S.
FILED
MAR 3 1980
MICHAEL RODAK, JR., CLERK

# In the Supreme Court of the United States

JOEL D. RUBIN et al., and JAMES D. ALEX, and JOSEPH RUBENSTEIN, et al.,

*Plaintiffs-Petitioners,*

vs.

U. N. INDUSTRIES, INC., et al.,

*Defendants-Respondents.*

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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**PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT**

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Petitioners Joel D. Rubin, et al., James D. Alex and Joseph Rubenstein respectfully pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals approving a settlement offered by Harry Mosser, Sr. and the Bank of the Southwest.

Petitioners Further Petition For A Review of the Order of the United States District Court that modified the class definition that:

> "All persons who purchased free tradeable shares of stock of U. N. Industries, Inc., on the over-the-counter market through a broker-dealer during the period from July 1, 1968 to and including December 26, 1968"

are the only persons who can share in the proceeds of settlement.

The Order of the United States Court of Appeals approving the settlement is included in the Appendix.

## JURISDICTIONAL STATEMENT

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. Section 1264.

Petitioner seeks certiorari to issue to the United States Court of Appeals requiring it to vacate its order approving the order of the District Court, approving a settlement to be shared in only by "all persons who purchased free tradeable stock of U. N. Industries, Inc. on the over-the-counter market during the period from July 1, 1968 to and including December 26, 1968."

## QUESTIONS PRESENTED

Can the Court deny Petitioners the right to rescind the sale to Mosser, Sr. under Rule 60(b), (1), (2) and (3) of the Federal Rules of Civil Procedure when newly discovered evidence confirms that the sale to U. N. Industries, Inc. was consummated to U. N. Industries by Mosser, Sr., as confirmed in a direct telegram to Paul Dawson the then President of U. N. Industries, Inc. (Copy of the telegram is attached hereto as part of the Appendix.)

Can Mosser, Sr. and the Bank of the Southwest jointly be permitted to profit by this transaction of having received jointly in excess of $6,000,000 which neither of them acknowledged until they were required to file an Answer to the Request for Admissions filed by William Henning Rubin against Harry J. Mosser, Sr. and the Bank of the Southwest. (Copy of the Request for Admissions appears in the Appendix hereto.)



## ARGUMENT

### POINT ONE

### REASONS FOR GRANTING WRIT OF CERTIORARI

### THE NEWLY DISCOVERED EVIDENCE, THE LETTER ADDRESSED TO FRANK J. GREENE JR., SECRETARY OF U. N. INDUSTRIES, INC. SAN ANTONIO, TEXAS; AND THE TELEGRAM ACKNOWLEDGING THE RECEIPT OF THE PROCEEDS OF SALE, CLEARLY CONFIRMS THAT THE SALE FROM HARRY MOSSER, SR. TO U. N. INDUSTRIES, INC. WAS CONSUMMATED.

The Receiver, Peter V. Fazio, with approval of the Court quitclaimed whatever right, title and interest the Receiver had to those certain oil wells that were previously assigned to U. N. Industries, Inc. to Carmel F. Davis, the brother-in-law of Mosser, Sr.

Mosser, Sr. was never personally released.

That neither the Receiver or his attorney at the time of the conveyance from the Receiver to Carmel F. Davis had any knowledge whatsoever that what the Receiver was conveying was an interest that was owned one hundred percent by U. N. Industries, Inc. and was not a contigent interest, since Mosser led the Receiver and the Receiver's attorney to believe that he had never consented to the sale since he had not received all of the proceeds of the sale.

That statement that he never consented to the sale was found to be completely false and untrue as confirmed by the documents that were discovered after the conveyance was made and the sale confirmed by the Court. Mosser

used the Bank of the Southwest as a crutch, claiming it would not consent. When a request for admissions was filed, the Bank of the Southwest admitted it was paid in full.

The information that the sale was consummated and confirmed by Harry Mosser, Sr. personally to U. N. Industries, Inc. both in the form of a letter and in a telegram was information that was not available to either Fazio or his Counsel Rubin at the time of the conveyance of the *oil runs*. (Emphasis ours).

It was the Widow Kuhlmann who discovered the letter and the telegram at a later date.

Her husband Clarence Kuhlmann was the petroleum engineer who was employed by both U. N. Industries, Inc. and Harry Mosser, Sr. to prepare a map reflecting the exact locations where the leases were located that Mosser, Sr. was conveying to U. N. Industries, Inc.

The letter written on H. J. Mosser Oil and Gas Company stationary, Alice, Texas, under date of November 26, 1968 to Frank J. Greene, executed jointly by Harry J. Mosser, Sr. and Paul Dawson, recites the following:

> "This letter will serve to confirm our agreement whereby all oil and gas leases and mineral interests and personal property described in the Geological evaluation and Report made by C. A. Kuhlmann, dated October 1, 1967, (and referred to as Exhibit A in the Contract of Sale between U. N. Industries, Inc., Paul Dawson and Harry J. Mosser, Sr., dated September 14, 1968) have been fully assigned to U. N. Industries, Inc. and all payments incident to the escrow agreement of November 14, 1968 have been paid.
>
> "S/ Harry J. Mosser, Sr.
>
> "S/ Paul Dawson."



The acknowledgment from Harry Mosser, Sr. that he received from Paul Dawson the sum of $60,000 on February 4, 1969 and that the Contract between Mosser and Dawson is in full force and effect, is an additional item that did not come to light until the *"Widow Kuhlmann" disclosed the existence of the document.* (Emphasis ours).

In neither of the communications—either the telegram or the letter—that the deal was consummated is it made subject to the consent of the Bank of the Southwest.

Under these circumstances, shareholders Joel D. Rubin, et al., James D. Alex and Joseph Rubenstein, et al., have a right to petition the Court with supporting documentation.

Pursuant to Rule 60(b), (1), (2) and (3) of the Federal Rules of Civil Procedure, a Petition to Rescind the sale must be given a complete hearing by the Court.

In fact, the Receiver and Class Counsel should have joined in the Petition to Rescind the sale to those nominees of Mosser, Sr. since the value of those oil leases is not what Mosser, Sr. or the Bank of the Southwest offered to pay the shareholders, but is the value of those oil leases.

The recent communication of Gilbert Andreen, which is being filed with this Petition for Certiorari as part of the Appendix, confirms that for the months of July, August and September of 1979, the oil wells on the leases in question, formerly owned by U. N. Industries, Inc. produced 996,000 M.C.F. at $1.85 per M.C.F.

For that volume of production with eighty percent thereof assigned to U. N. Industries, Inc. calculated at a price of $1.85 per M.C.F., the oil leases on that property are presently producing at the rate of 1⅓ million dollars per year.

The District Court was requested to send the matter to a special magistrate to hold hearings and take evidence on the question of rescission. The District Court denied that.

The United States Court of Appeals also denied the right to have the matter heard by a magistrate who would hold hearings on the question of rescission.

There was no change in the position of either party until Counsel Rubin filed his request for admissions against Harry Mosser, Sr. and the Bank of the Southwest.

When the Bank responded to the Request for Admissions, *it was required for the first time* (emphasis ours) *to admit that it no longer had any debt due it from Mosser, Sr. or his family.*

Up until that point the Bank of the Southwest was used as a crutch by Mosser to constantly state that the Bank will not agree to a settlement of the case when it was offered that U. N. Industries, Inc. surrender fifty percent of the production to the shareholders and fifty percent for Mosser.

The case of *Fay v. Noia,* 382 U.S. 391, 9 L.Ed.2d 817, is exactly in point since that case held that a federal court has broad powers of habeas corpus to hold an evidentiary hearing and determine the facts.

The same principle applies to U. N. Industries, Inc. as under the *Fay* v. *Nois* case, ibid. It was mandatory that an evidentiary hearing be held of all the facts.

The testimony of Paul Dawson the original President who consummated the deal with Harry Mosser, Sr.—at the hearing before the Honorable Bernard Decker—that he received a telegram from Harry Mosser, Sr. acknowledging the consummation of the Contract, and the other



documents, made it mandatory upon the District Court to rescind the sale since that evidence was not available while Paul Dawson was incarcerated.

Neither Mosser nor the Bank of the Southwest revealed the true facts of the case, and yet they seek to do equity and have forgotten the principles: that he who comes into equity must come into equity with clean hands.

The District Court was blinded by the fact that although approximately one million dollars was offered in the settlement, the settlement in today's market if petroleum experts were called in to testify would be around $10,000,000.

The Mosser interests were duty bound to inform the Court that they had paid off the Bank, and it was just a question of consummating a settlement between the litigants which was Harry Mosser, Sr. and the shareholders.

Mrs. Mosser, Sr. was not a bona fide purchaser, and neither was he son who admitted in a deposition taken down in Texas, at which Counsel for Petitioners attended, that he did not know what the entire transaction was all about, and yet Mosser, Sr. was using the son as a pawn to try and claim that he had an interest in the lease.

The record shows that Mosser, Jr. was on the payroll of U. N. Industries, Inc.

## POINT TWO

**MOSSER HAVING ACKNOWLEDGED ON NOVEMBER 26, 1968 THAT:**

> **"ALL OIL AND GAS LEASES AND MINERAL INTERESTS AND PERSONAL PROPERTY DESCRIBED IN THE GEOLOGICAL EVALUATION AND REPORT MADE BY C. A. KUHLMANN DATED OCTOBER 1, 1967 (AND REFERRED TO AS EXHIBIT A IN THE CONTRACT OF SALE BETWEEN U. N. INDUSTRIES, INC., PAUL DAWSON AND HARRY J. MOSSER, SR. DATED SEPTEMBER 14, 1968) HAVE BEEN FULLY ASSIGNED TO U. N. INDUSTRIES, INC. AND ALL PAYMENTS INCIDENT TO THE ESCROW AGREEMENT OF NOVEMBER 14, 1968 HAVING BEEN PAID."**

**IS ESTOPPED TO DENY THAT THE SALE WAS CONSUMMATED AND HE COULD NOT HAVE RESCINDED THE SALE.**

The information that Harry J. Mosser, Sr. had jointly executed a letter to the above effect, copy of which is enclosed in the Appendix hereto, is newly discovered evidence that was not known either to Peter V. Fazio the Receiver or his Counsel or the Court when Mosser presented an offer using his brother-in-law, Carmel F. Davis as nominee to purchase the right, title and interest of the Receiver to those certain oil leases that were already the property of U. N. Industries, Inc.

The confirmation of the Agreement of November 26, 1968, was not discovered until after the death of Clarence F. Kuhlmann.



Until the discovery of the letter that there had been a complete assignment of the leases, every one was under the impression that the Bank of the Southwest had to consent to the assignment and they were arbitrarily withholding the consent.

The Bank of the Southwest had been used as a crutch and a subterfuge by Harry Mosser, Sr. to attempt to defeat the rights of the shareholders of U. N. Industries, Inc. after confirmation of the sale on November 26, 1968.

Petitioners contend that pursuant to Rule 60(b), (1), (2) and (3) of the Federal Rules of Civil Procedure it was mandatory upon the United States District Court upon the filing of a Petition to Rescind the Sale, that Peter Fazio Receiver had previously made when the Court was apprised of the fact that the receiver was actually selling the rights and title of U. N. Industries, Inc. instead of a contingent interest. Until the discovery of the letter and telegram, the receiver and his counsel had always been under the impression that all of the production of the oil leases belonged to the Bank of the Southwest.

There was no knowledge of the existence of an Agreement; of a telegram from Harry Mosser, Sr. acknowledging the consummation of the sale to U. N. Industries, Inc. until the disclosure by the Widow Kuhlmann. At this point in time the Petition to Rescind the Sale having been filed it was mandatory upon the Court to rescind the sale.

The argument of the Court of Appeals which is set forth in the Opinion of the Court, asserts:

> "The Appellants argue that certain reconveyance of property by the Receiver back to one of the defendants as part of an earlier settlement should be rescinded because the reconveyance was made while the

> receiver lacked certain material information. Upon a review of the proceedings however, it is apparent the district court properly found the receiver had full knowledge of the circumstances surrounding the reconveyance. We are satisfied, furthermore, that substantial and insurmountable difficulties would arise in rescinding a reconveyance that occurred over eight years ago, and the appellants have made no showing that such a rescission could place the parties in the status quo.''

is completely erroneous and untrue since there are no intervening parties other than the Mosser family. In fact, the Court admonished Mosser, Sr. that it was no defense that the oil leases were now in the names of Susan Mosser and other corporations in which they controlled the stock.

The Court of Appeals in assuming that to allow the Petition to Rescind the Sale would affect outside parties or bona fide purchasers, was a completely erroneous finding. In fact the evidence in the trial court confirmed as Petitioner had charged, that:

> ''H. J. Mosser,
> Yegua-Stillwell Gas Corp.
> Central Producers, Inc.
> Texas Oil and Gas Corporation
> Trident Corporation
> Pemac Company
> XRC, Inc.
> J. F. Cichowski
> Cia-Bar Oil & Gas Company, and
> Corpus Christi Management''

were all nominees of Harry Mosser, Sr.

In fact, the record further discloses that it was at this point that the Hon. Judge Decker became impatient and requested that Harry Mosser, Sr. increase his offer when he started to ''dodge'' behind the dummy corporations.



This was as a result of a motion filed by Counsel Rubin that Mosser, Sr. be restrained from disposing, transferring, or hypothecating any of the interests he had in those oil wells.

The Receiver Peter V. Fazio and his Counsel William Henning Rubin at the time that the Court was requested to approve the quitclaiming of title of the Receiver to Carmel F. Davis, Mosser, Sr.'s brother-in-law, and nominee, were of the opinion that U. N. Industries, Inc. only had a contingent interest in those wells.

They were absolutely uninformed that Mosser, Sr. had executed the agreement with Paul Dawson to the effect that *the sale of the oil leases to U. N. Industries, Inc.* was consummated.

That information did not ''surface'' until the death of Clarence Kuhlmann and the discovery that the ''Widow Kuhlmann'' had in her possession both the letter and the telegram that confirmed those facts.

The basis of the Widow Kuhlmann having those documents in her possession was that Clarence Kuhlmann was the petroleum engineer who was jointly employed by U. N. Industries, Inc. and Harry Mosser, Sr. to prepare the map and the exact location of each and every well that was being assigned to U. N. Industries.

The telegram and the letter are the newly discovered evidence that mandated the Court to give close scrutiny to the manipulations that were used both by Mosser, Sr. and by the Bank of the Southwest up until that point to say: ''The sale was never consummated since the Bank of the Southwest never consented.''

The United States Circuit Court of Appeals in *Rozier* v. *Ford Motor Co.*, 573 Fed. Rptr. 2d 1332 finds:

> "One who asserts that an adverse party has obtained a verdict through fraud, misrepresentation or other misconduct has the burden of proving the assertion by clear and convincing evidence." Saenz v. Keridy, 178 F.2d 417, 419; Gilmore v. Strescon Industries, Inc., 66 FRD 146, 153.

Mosser, Sr. knew that he had confirmed the sale "without question" to U. N. Industries, Inc. He also was aware that he had not arranged for the Bank of the Southwest to consent to the oil leases whose assignment he had agreed to.

He also was aware of the fact that he was using the Bank of the Southwest as a crutch; and in fact it was not until he answered including the Bank the request for admissions which came as a surprise and caused the offer of settlement, that it was revealed for the first time that the Bank had been paid in full.

Up until that date everyone including the Receiver was under the impression that it was the Bank of the Southwest that was preventing the shareholders from receiving their interest in U. N. Industries, Inc., which they were rightfully entitled to after paying a cash consideration for the stock.

Rule 60(b) has always been used where information has been wrongfully withheld from the litigants.

Mosser in withholding his information is guilty of perpetrating the fraud as well as the Bank of the Southwest who failed to disclose that they had been paid in full. Since their lawyers actively participated in the proceedings to set aside the sale, they were required to reveal



their trust position and could not hide under the subterfuge that Mosser, Sr. was once indebted to them. This is grounds for rescinding the sale.

The testimony of Paul Dawson, Tr. 26, before Judge Decker that U. N. Industries, Inc. paid for the bills incurred in pumping the oil and operational expenses even though Mosser assigned the receipts from the leases to U. N. Industries, Inc. that it was U. N. Industries, Inc. funds that paid the operational expenses of U. N. Industries, Inc.

This is in conflict with the decision of the Court to award a recovery to those people that purchased from a broker instead of those who purchased from the corporation.

An examination of the testimony of "Cumberland" who testified on the part of the Bank of the Southwest and when the question was propounded: At the time of the conveyance by U. N. of those leases, there was approximately $220,000 that was being withheld by the oil companies.

> "Q. At the time of the conveyance by U. N. of those leases, there was approximately $220,000 that was being withheld by the oil companies in which U. N. as a part of this deal gave a release. Weren't those leases on trust property, or some of those leases on trust property?"

reveals the following answer:

> "A. I can't answer that. I didn't see the source of those released proceeds."

Since it was an officer of the Bank that was testifying, he knew quite obviously from where the funds were coming. Why the cover up? Were they protecting Mosser?

Mr. Gilbert Andreen the petroleum engineer, further advises in his communication that the leases formerly owned by U. N. Industries, Inc. are now under the names of: Suzan Mosser, Mosser Trust, or H. J. Mosser, Sr.

## POINT THREE

**HARRY MOSSER, SR. AND THE BANK OF THE SOUTHWEST AND SO-CALLED CLASS COUNSEL ARE ESTOPPED TO DENY THE FACT THAT $80,000 WAS SPENT BY U.N. INDUSTRIES, INC. FROM THE FUNDS IT OBTAINED FROM THE SHAREHOLDERS WHO BOUGHT DIRECTLY FROM THE CORPORATION AND NOT FROM A BROKER TO DRILL ON THE PROPERTY.**

There is no evidence that has ever been offered or introduced that the Bank of the Southwest objected to U. N. Industries, Inc. drilling on trust property. Furthermore, the checks identified in evidence by Paul Dawson confirmed the fact that U. N. Industries, Inc. paid the cost of pumping of the wells on trust property and not Mosser, Sr. or his oil company.

If not for the funds supplied directly to U. N. Industries by the purchasing shareholders, the entire Mosser, Sr. escapade could never have taken off the ground. It was the purchasing shareholders that provided the capitol for U. N. Industries, Inc. and not the shareholders that purchased from a broker.



## POINT FOUR

**THE ORDER MODIFYING THE CLASS DEFINITION THAT:**

> **"ALL PERSONS WHO PURCHASED FREE TRADEABLE SHARES OF STOCK OF U. N. INDUSTRIES, INC. ON THE OVER-THE-COUNTER MARKET THROUGH A BROKER-DEALER DURING THE PERIOD FROM JULY 1st, 1968 TO AND INCLUDING DECEMBER 26, 1968"**

**IS AN ERRONEOUS ORDER AND CONTRARY TO THE AUTHORIZATION RECEIVED BY PLAINTIFFS' CLASS COUNSEL FROM THE SHAREHOLDERS.**

Class Counsel previously notified all shareholders that they would be represented unless they objected to the represenation. U. N. Industries paid the cost of this mailing.

The order modifying the class definition was completely illegal and void because of the lack of due process.

*By what authorization can you seek to represent a litigant and then "sell him out?"*

It was those shareholders who supplied funds to U. N. Industries, Inc. that was used to pay Harry Mosser, Sr. his earnest money deposit plus additional funds both in the purchase of the lease transactions as well as the gypsum mine.

When stock was purchased from a broker, the purchase price never ended up in the treasury of U. N. Industries, Inc. but in the hands of the speculator.

The order modifying the class was a complete sellout of the rights of the shareholders they sought to represent.

The number of shareholders that purchased from a broker compared with the number of shares purchased directly from the corporation is very small.

A great fraud was perpetrated as a result of the Hon. Bernard Decker entering an order modifying the definition of the class.

U. N. Industries, Inc. did not benefit in any way because of the gyrations of the price of stock among brokers.

It has been established law that shareholders or bond holders cannot be limited to the price that they paid therefor, which is supported by the case: *Lorraine Castle Apartment Building Corporation,* 53 Fed. Supp. 994, where the Court held:

> "There is no occasion to limit participation in a plan by the holders of bonds purchased during the pendency of these proceedings to the amount of their cost. In re: Utilities Power & Light Cor., D.C. N.D. Ill. 1939, 29 F. Supp. 763, 770; In re: Celotex Co., D.C. Del. 1935, 12 F. Supp. 1, 5; In re: Indiana Central Tel. Co., D.C. Del. 1938, 24 F. Supp. 342, 344; In the Matter of Point Building Land Co., D.C. S.D. Pa. 1938, 38 A.B.R. N.S. 464, 466."

The decision was confirmed by the Court of Appeals in 14 F.2d 55.

Petitioners call the attention of the Court to the case of: *Greater Boston Television Corporation* v. *Federal Trade Communications Commission,* 463 F.2d 286. The Court in that case establishes the doctrine that a mandate secured by fraud can be reconsidered at any time. The Court specifically stated:

> "There is firmly established in the law the doctrine confirming the power of a court to set aside at any time any mandate that was procured by effecting a fraud on the court. Cord v. Smith, 370 F.2d 418, 423 ( th Cir. 1966). In holding that this paramount doctrine overrode the 'term' rule even when that was in force, the Supreme Court said, in Hazel-Atlas Glass



> Co. v. Hartford-Empire Co., 322 U.S. 238, 244, 64 S.Ct. 997, 88 L.Ed. 1250 (1944). . ."

Mosser and the Bank of the Southwest are the biggest perpetrators of the fraud in this cause. They waited twelve years and then only answered that they were paid in full when the request for admissions was filed. Where was the Bank? Where was Mosser all those years when the matter was being contested in the District Court in the matter?

The Andreen Report reflects $1,500,000 as only some of the leases being the annual "take" by Mosser and his associates. Actually: what is the entire income from all the leases?

When one considers that the decision of the Court is to wipe out those persons that purchased their stock directly from the corporation, the greatest injustice has been carried out through judicial channels.

## CONCLUSION

It is respectfully submitted that under the case law, Petitioners are entitled to have the sale rescinded based on the discovery of the new evidence that U. N. Industries, Inc. was actually the owner of the oil leases that had been assigned to her by Harry J. Mosser, Inc.

The Bank of the Southwest had been paid in full and was being used as a crutch by Mosser, Sr.

That it was only after the filing of the Request for Admission by Counsel Rubin that the Bank was obligated to come forward and declare without hesitancy that it had been paid in full.

It is therefore quite obvious that this proceeding was brought not to protect speculators who bought shares from

a broker, but the persons that purchased shares directly from the corporation which was the "backbone" of the entire transaction.

One hundred million dollars could have been paid to brokers, but that would not have given the corporation one penny to pay a single worker for the work performed at an oil pump, or to pay for the electricity for pumping the oil or to the operator of the oil truck that delivered the oil to the refinery.

It is respectfully submitted that the Petition for Certiorari should issue forthwith.

Respectfully submitted,

WILLIAM HENNING RUBIN,
*One of the Attorneys for and on behalf of:*

JOEL D. RUBIN, *et al.*,
*Plaintiffs-Appellants, on behalf of himself and all other shareholders of the Class; and,*

U. N. INDUSTRIES, INC,
*Plaintiff-Appellants, pursuant to Amendment to the 4th Amended Complaint; and,*

JAMES ALEX, *et al.*,
*Shareholders for and on behalf of himself and all other shareholders of his class.*

Law Offices Of:
WILLIAM HENNING RUBIN
188 W. Randolph — 714
Chicago, Illinois 60601
263-6780

# APPENDIX

H. J. MOSSER OIL & GAS COMPANY

P. O Box 145
ALICE TEXAS

November 26, 1968

Mr. Frank J. Greene
Secretary, U.N. Industries, Inc.
1600 N.E. Loop 410
San Antonio, Texas

Dear Mr. Greene:

This letter will serve to confirm our agreement where by all oil and gas leases and mineral interests and personal property described in the Geological Evaluation and report made by C.A. Kuhlmann, dated October 1, 1967 (and referred to as Exhibit A in the contract of sale between U.N. Industries, Inc., Paul Dawson and Harry J. Mosser, Sr., dated September 14, 1968) have been fully assigned to U.N. Industries, Inc. and all payments incident to the escrow agreement of November 14, 1968 have been paid.

Very truly Yours,

/s/ *Harry J. Mosser, Sr.*
Harry J. Mosser, Sr.

/s/ *Paul Dawson*
Paul Dawson

HJM,Sr./as

WESTERN UNION TELEGRAM

236P PDT OCT 22 68. LB226 NSB360

NS HSE191 113 Q2 EXTRA RX PDB HOUSTON TEX 22 327P CDT

PAUL DAWSON, PRESIDENT PERSONAL DELIVERY REPORT DELIVERY

UN INDUSTRIES INC 9541 WEST PICO BLVD LOSA

ON SEPTEMBER 14 1968 CONTRACT OF SALE AND AGREEMENT WAS MADE BY AND BETWEEN HARRY J. MOSSER, SELLER, AND UN INDUSTRIES INC, BY ITS PRESIDENT, PAUL DAWSON, BUYER. THE CLAUSE WHERE BUYER IS TO PAY $300,000 HAS BEEN REDUCED TO $120,000 TO BE PAID WEDNESDAY, OCTOBER 23, 1968, AND BALANCE OF ORIGINAL $300,000 WILL BE ADDED TO DEBENTURE MONEY TO BE OBTAINED AS PER ORIGINAL AGREEMENT. ALL AGREEMENTS OF ORIGINAL CONTRACT WILL THEN BE CARRIED OUT. FURTHERMORE, UN INDUSTRIES INC, AGREES TO IMMEDIATELY START REWORKING WELLS DISCUSSED IN BENBOLT AREA TO OBTAIN INCOME TO HELP SELL DEBENTURES. THIS IS IN ACCORDANCE WITH MOSSER'S AGREEMENT WITH BANK OF THE SOUTHWEST

HARRY J MOSSER

NOT IN OFC
LEFT WORD TO CALL IF COMES
IN TONITE IF NOT WILL DLR AM

14 1968 $300,000 $120,00 23 1968 $300,000
(339).



G. M. ANDREEN & ASSOCIATES
CONSULTANTS
OIL — GAS — MINERALS

February 5, 1980

Mr. William H. Rubin, Esq
188 W. Randolph St. Suite 714
Chicago, Illinois 60601

Dear Mr. Rubin;

Pursuant to your request the production records kept by Dwights were reviewed to ascertain the current status of those leases involved in the Mosser-UN Industries transaction.

Gas production figures were readily available for the period of July, August, September of 1979. During this three month period, the gross gas production from wells on the leases involved amount to 249,109 MCF of gas. Using the foregoing figure as a base, the annual production for 1979 is expected to be approximately 996,000 MCF of gas. If a working interest of 80% and a price of $1.85 is assumed, the value of the 1979 production to the owners of the position that UNI should now hold is approximately $1,475,000.

It was noted that most of the currently producing wells are now completions which should produce for several years. A schedule of the news wells follows.

Old wells.....6
1976.....4
1977.....3
1978.....8
1979.....7

Several locations for additional wells have been applied for and will probably be drilled shortly. The fields involved i.e. Alice, Reynolds. Ben Bolt and Orange Grove have been and still are active drilling areas.

It was also noted that the wells on leases styled H.J. Mosser, Suzann Mosser, or Mosser Trust account for 38% of the current production and in 1979 yielded approximately $560,000 to the owners of the working interest in these leases.

The loss to UN Industries and/or its stockholders from the failure of the Mosser transaction based on recorded production now exceeds $10,000,000 and is increasing at a rate of $1,500,000 per year. The total future loss may equal that accrued to date.

If we can be of additional assistance on this matter, please advise.

Very truly yours,

/s/ *G. M. Andreen*
G. M. Andreen

GMA:bls



IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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JOEL D. RUBIN, et al,

Plaintiffs,

vs.

U. N. INDUSTRIES, INC., et al,

Defendants

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CIVIL ACTION — Number 70 C 189
Consolidated with:
Number 70 C 336 and
Number 70 C 349

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PETITION TO RESCIND SALE OF CERTAIN OIL LEASES EXECUTED TO CARMEL F. DAVIS, NOMINEE FOR HARRY MOSSER, SR., PURSUANT TO ORDER OF COURT, ENTERED ON JUNE 30, 1971

NOW COME PLAINTIFFS JOEL D. RUBIN, et al, for and on behalf of themselves and the majority of all other shareholders and for and on behalf of U.N.Industries, Inc. and—pursuant to Rule 60(b)(1),(2) & (3) of the Federal Rules of Civil Procedure—petition the Court for the vacation of the Order entered on June 30, 1971 conveying certain oil leases to Carmel F. Davis, nominee for Harry Mosser, Sr., and to rescind the sale.

That, in support of this Petition, PLAINTIFFS-MAJORITY SHAREHOLDERS represent unto this Court as follows:

1. That the Order that was entered on June 30, 1971 assigning certain oil leases to Carmel F. Davis, nominee for

Harry S. Mosser, Sr., was predicated on the representation by Harry Mosser, Sr., the Bank of the Southwest National Association of Houston, Texas, acting as Trustee for and on behalf of the Mosser children as well as his wife, Suzanne Mosser, and Harry Mosser, Sr., that the Bank had refused in good faith to consent to assignment of twenty-five (25%) percent of the oil production to U. N. Industries, Inc., on those properties where the Bank had a prior lien, and that the Bank had the sole authority to consent to the assignment of the 25 percent of the oil production from the leases;

2. Other factors have since come to the attention of Plaintiffs-Shareholders indicating that Harry Mosser, Sr. dictated the action taken by the Bank in refusing to consent, after he had "pocketed" the $300,000 of U. N. funds.

3. That the Agreement covering the Order of June 30, 1971 (copy of which is attached hereto and made a part hereof and incorporated as Exhibit A) further provides that U. N. Industries, Inc. will receive one sixty-fourth (1/64) interest in all oil production of wells drilled on the property leased from Charles W. Muil, Independent Executor of the Estate of Charles Muil, deceased.

4. That immediately following the payment of the $300,000 to Harry S. Mosser, Sr., and the delivery of the 3,000,000 shares of U. N. Industries stock, Lawrence Warburton, Attorney for Harry Mosser, Sr., advised Plaintiff, U. N. Industries, Inc., that Harry Mosser, Sr. would arrange with the Bank to assign to U. N. Industries 25 percent of the production and he "anticipated no difficulty" in obtaining the consent of the Bank.

5. That the investigation further discloses that Harry Mosser, Sr., Carmel F. Davis and the Bank of the Southwest National Association of Houston as Trustee of the Mosser interests further conspired to defeat the agreement



between Carmel F. Davis as nominee for the Mosser interests and Receiver Peter V. Fazio which provided that U. N. Industries, Inc. would retain a 1/64th interest in the 1617-odd acres of land which was covered by a lease from Charles W. Muil Independent Executor of the Estate of Charles Muil, Deceased.

6. That Carmel F. Davis and his associates, prior to the confirmation of the sale of the interest of the receiver insisted that the annual rental of $4034.75 be paid to Charles W. Muil independent executor of the Estate of Charles Muil, deceased, concurrently with the conveyance by the Receiver.

7. That the receiver issued his check to Charles W. Muil covering the sum of $4034.75 and placed a restrictive endorsement on the check.

8. That to further protect all of the parties against a default being declared by Charles W. Muil, the independent executor, Counsel for Plaintiffs-shareholders and the receiver obtained a preliminary injunction against Charles W. Muil as Independent executor, and caused an injunction writ to be served by the U. S. Marshall for the area in which Charles W. Muil is located.

9. That the docket of this case reflects the issuance of the preliminary injunction and the service of the writ by the Marshall.

10. That as a further conspiracy to defraud plaintiff, U.N.Industries, Inc., and its shareholders, the Defendant Harry Mosser, Sr., and his associates, Carmel F. Davis and Defendant Harry J. Mosser, Jr. and Jo Suzanne Mosser Shanks, entered into a conspiracy with Joseph F. Cichowski and Charles W. Muil as independent executor of the estate of Charles Muil deceased, to defraud U. N. Industries, Inc. of its 1/64th interest and on June 8, 1972, executed a new lease covering the 1617-odd acres of land in Jim Wells County, Texas, pursuant to the terms of which U. N.

Industries Inc. was deprived of its 1/64th interest in the oil production.

11. That Charles F. Cichowski is the same individual with whom the Bank executed an Agreement on the 1st of December, 1971 for the drilling of the certain areas eliminating the 1/64th interest of U. N. Industries, Inc.

12. That the signature of Charles W. Muil as independent executor of the Estate of Charles Muil Deceased, is notarized by Lawrence H. Warburton,Notary of Jim Wells County, Texas; Mosser's attorney.

13. That a copy of the oil, gas and mineral lease signed is attached as Plaintiff's Exhibit B, and incorporated and made a part of this Motion.

14. That the Receiver quitclaimed his interests in certain oil production to Carmel F. Davis as nominee for Harry Mosser, Sr., on the representation that the Mosser interests had paid the electric bills for pumping the oil from 1968 to 1971.

15. That the representation was completely false and untrue and the records disclose that Paul Dawson as Trustee for U. N. Industries paid from his trustee account the utility bills to pump the oil.

16. That it was that oil production pumped with the electricity paid for by U. N. Industries, Inc. that was reassigned to Carmel F. Davis, nominee for Mosser.

17. That Counsel for Plaintiffs-Shareholders, William H. Rubin ascertained subsequent to the assignment that following the discontinuance of the payment of the utility bills by Paul Dawson, that the oil gushed from the ground by its own force since Mosser Sr. and his company, Mosser Gas and Oil Company had failed to pay any of the utility bills contrary to their representations.



18. Paul Dawson, the former President of U. N. Industries, Inc., who was incarcerated, has recently been released and he has produced a copy of a resolution of Plaintiff, U. N. Industries, Inc., that Harry Mosser, Sr., was made the Chairman of the Committee of the Board of Directors of an oil exploration and had complete charge, including the designation of the particular oil leases where the drilling was to take place, and the exact spot where the drill was to be inserted into the ground.

19. At a Board of Directors meeting, Harry Mosser, Sr. made the exact statement that, "I'll bet my bottom dollar on the amount of oil contained in my leases."

20. That Plaintiff-Shareholders have just become aware, pursuant to a survey prepared by G. M. Andreen, registered professional engineer, pursuant to Report dated November 8, 1976, (copy of which is hereto attached and incorporated and made a part of this Petition as Exhibit Numbered C), that the Bank of the Southwest National Association of Houston, Texas, as trustee for Harry J. Mosser, Jr. and Jo Suzanne Mosser Shanks under the agreement of November 10, 1944, executed a lease covering specific leases reconveyed to Carmel F. Davis guaranteeing a lease to Joseph F. Cichowski for drilling oil and gas et cetera. That said lease fails to provide for a 1/64th interest to the U. N. Industries, Inc.

21. That the Agreement of September 1, 1971 between the Bank of the Southwest as Trustee and Cichowski, is a deliberate attempt to avoid the Agreement entered into between Carmel F. Davis nominee for Harry S. Mosser, Sr. and Peter V. Fazio, Receiver, which provided for the payment of the 1/64th interest in production.

22. That the said oil and gas lease was executed on behalf of the Bank of the Southwest as Trustee by R. S. Neuhaus, Bank Officer, who took part in the negotiations

between the Bank of the Southwest and U. N. Industries, Inc. in 1968 and was fully acquainted that U. N. Industries retained a 1/64th interest in the leases that Peter V. Fazio reconveyed to Carmel F. Davis.

23. That the Andreen Report confirms that for the first six months of 1976, 765,798 barrels of oil were produced from the McCarthy-Mosser Trust Number 1, M. Schutte, M. Holmes, C. Dodd, G. Franks, J. Ring, and Mosser Trusts (plus information PJA, SI leases, P & A SI gas wells).

24. That in addition, in the year 1976 204,283 barrels were produced. From January 1, 1976 to May 1, 1976 eight wells have been drilled on the Mosser property.

25. That thus far, not a single dollar has been received from any of the production on the Mosser properties or the Muil properties by U. N. Industries, Inc.

26. The Plaintiffs-Shareholders are prepared to refund to Carmel F. Davis, Sr., nominee for Harry S. Mosser, Sr., the sum of $50,000 concurrently with the Order of Court rescinding the sale to Carmel F. Davis and the reconveyance of those leases to Plaintiff, U. N. Industries, Inc., the interest of which was heretofore quitclaimed by Peter V. Fazio, Receiver.

27. That Plaintiffs-Shareholders are prepared to refund to Carmel F. Davis, Sr. $25,000.00 heretofore paid to Peter V. Fazio, Receiver, concurrently with the reassignment of twenty-five (25) percent of the oil runs to U. N. Industries, Inc., heretofore released by Peter V. Fazio Receiver on behalf of Plaintiff, U. N. Industries, Inc.

WHEREFORE, THE MAJORITY PLAINTIFFS-SHAREHOLDERS HEREBY PRAY as follows:

A. That an Order be entered rescinding the agreement between Peter V. Fazio Receiver and Carmel F. Davis as



nominee for Harry S. Mosser, Sr., and vacating the Order conveying the interests of U. N. Industries, Inc. in certain oil leases to Carmel F. Davis, nominee.

B. MAJORITY PLAINTIFFS-SHAREHOLDERS FURTHER PRAY that concurrently with the reconveyance of those oil leases to U. N. Industries, Inc., that the Receiver Peter V. Fazio pay to Carmel F. Davis Sr. providing said leases have not been encumbered with additional liens or claims not in existence at the time of the conveyance to Carmel F. Davis, Sr. the sum of $50,000.

C. The MAJORITY OF PLAINTIFFS-SHAREHOLDERS FURTHER PRAY That Carmel F. Davis, nominee and or Defendant HARRY S. MOSSER, SR., and/or Defendant BANK OF THE SOUTHWEST, pay to U. N. Industries, Inc., 25 percent of the amount of the oil runs received by each of them or all of them from the date of the conveyance pursuant to Court Order entered on June 30, 1971.

D. MAJORITY OF PLAINTIFFS-SHAREHOLDERS FURTHER PRAY That Defendants, Carmel F. Davis, HARRY S. MOSSER, SR., and/or BANK OF THE SOUTHWEST, pay to U. N. Industries, Inc., 25 percent of the oil runs received by Peter V. Fazio as Receiver, pursuant to the Court Order entered June 30, 1971 providing that U. N. Industries, Inc. concurrently repays to Carmel F. Davis, Sr. as nominee for Harry S. Mosser Sr. the $20,965.25.

E. MAJORITY PLAINTIFFS-SHAREHOLDERS FURTHER PRAY That Defendants HARRY S. MOSSER, SR., and CARMEL F. DAVIS nominee for HARRY S. MOSSER, SR., account to Plaintiff U. N. INDUSTRIES, INC., for all funds received from the gypsum mine oper-

ated by J. P. Boone which interest was assigned to U. N. Industries, Inc., including all of the stock of Mosser Oil and Gas Company.

F. MAJORITY PLAINTIFFS-SHAREHOLDERS FURTHER PRAY That H. J. MOSSER, INC. reassign all of the stock of Mosser Gas and Oil Company that the Receiver delivered concurrently with the execution of the quitclaim deeds to certain oil leases.

G. MAJORITY PLAINTIFFS-SHAREHOLDERS FURTHE PRAY That they may have such further relief as the Court may deem proper.

JOEL D. RUBIN, et al, for and on
Behalf of himself and the Majority
of Plaintiffs-Shareholders of
U. N. INDUSTRIES, INC.,

By .....
WILLIAM HENNING RUBIN
One of its attorneys.

Law offices of:
WILLIAM HENNING RUBIN
188 W. Randolph — 714
Chicago, Illinois 60602
263-6780



## AFFIDAVIT

WILLIAM HENNING RUBIN on oath duly sworn deposes and says:

1. That he filed the original proceedings in this case;

2. That he is one of the attorneys for the Plaintiffs-Shareholders owning in excess of fifty percent of the issued and outstanding stock of U. N. Industries, Inc.

3. That he has received specific designations from in excess of fifty percent of the issued and outstanding stock of U. N. Industries, Inc. to petition the court for the removal of the Receiver and the restoration of the corporation to the shareholders.

4. That in 1971 when the proceedings were negotiated between plaintiffs-shareholders and the Bank of the Southwest Association, and Carmel F. Davis as nominee for Harry S. Mosser, Sr., Lawrence F. Warburton acted as attorney for Harry Mosser and Carmel F. Davis, and the law firm of Fulbright and Jaworski acted as attorney for the Bank of the Southwest, and your affiant acted as attorney for the Receiver as well as one of the attorneys for the Plaintiffs-shareholders.

5. That the representations referred to in this petition were specifically made by written communications, the documentary evidence of which is in the possession of Peter V. Fazio the Receiver, and by telephone conversations between counsel for petitioners, Peter V. Fazio and William Henning Rubin, all of said conversations having taken place in conference calls at the offices of Chapman & Cutler at 111 West Monroe Street, Chicago, Illinois;

6. That the representations made in this Petition are true in substance and in fact.

AFFIANT FURTHER SAITH NAUGHT.

.....

William Henning Rubin

SUBSCRIBED AND SWORN TO
before me this ..... day
of January, 1977.

STATE OF ILLINOIS )
) SS.
COUNTY OF COOK )

VERIFICATION

WILLIAM HENNING RUBIN, on oath deposes and says that he is one of the attorneys for Plaintiff in the above-entitled action; that he has made a thorough examination of the books and records of U. N. INDUSTRIES, INC.; that he has a thorough knowledge of the transactions that transpired between Defendant, U. N. INDUSTRIES, INC., and the parties-Defendant hereto; that the statements made in this Fourth Amended Complaint are true in substance and in fact, except as to those matters which are stated to be upon information and belief and as to such matters Affiant is informed and belives that the same are true.

/s/ *William Henning Rubin*
William Henning Rubin

SUBSCRIBED AND SWORN to
before me this 14th day
of February, 1974.
/s/ *Bonnie Burke*
Notary Public



70 C 189

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOEL D. RUBIN, et al,
Plaintiffs,
versus NUMBER 70 C 189
U. N. INDUSTRIES, INC., et al,
Defendants

REQUEST FOR ADMISSION BY HARRY J. MOSSER, SR., AND THE BANK OF THE SOUTHWEST, PURSUANT TO RULE 36 OF THE RULES OF CIVIL PROCEDURE

Request by PLAINTIFF U. N. INDUSTRIES, INC., for admission by DEFENDANT HARRY J. MOSSER, SR., and the BANK OF THE SOUTHWEST, Pursuant to Rule 36 of the Federal Rules of Civil Procedure, of the following:

1. That the Bank of the Southwest and Harry J. Mosser, Sr. either individually or jointly received the sum of $7,760,000 or more from oil production from the leases that were originally assigned to U. N. Industries, Inc., and which he had agreed to assign to U. N. Industries, Inc. as more fully described in the Geological Evaluation and Report made by C. A. Kuhlmann dated October 1, 1967, and referred to as Exhibit A in the Contract of Sale between U. N. Industries Inc., Paul Dawson and Harry J. Mosser,

Sr. dated September 14, 1968, from January 1, 1969 to January 1, 1976.

2. That on November 26, 1968 Harry J. Mosser, Sr. and Paul Dawson jointly addressed a letter to Frank Greene Secretary of U. N. Industries, Inc., confirming that:

> "This letter will serve to confirm our agreement whereby all oil and gas leases and mineral interests and personal property described in the Geological Evaluation and report made by C. A. Kuhlmann, dated October 1, 1967 (and referred to as Exhibit A in the contract of sale between U. N. Industries, Inc., Paul Dawson and Harry J. Mosser, Sr. dated September 14, 1968) have been fully assigned to U. N. Industries, Inc. and all payments incident to the escrow agreement of November 14, 1968 have been paid."

3. That on November 26, 1968 Harry J. Mosser, Sr. acknowledged that he received the sum of $60,000 from Paul Dawson and that the contract between Mosser and Dawson was in full force and effect.

4. That on November 22, 1968 Harry Mosser, Sr. addressed a telegram to Paul Dawson President of U. N. Industries, Inc. confirming that all agreements of the original contract will be carried out when $120,000 is paid to him in accordance with Mosser's agreement with the Bank of the Southwest.

5. That in the first six months of 1977 Harry J. Mosser Sr. and the Bank of the Southwest either individually or jointly received an average of $34,384 or more per month from oil production of the leases that he personally assigned to U. N. Industries, and those leases that he had agreed to assign.

6. That the debt of Mosser to the Bank of the Southwest has been paid in full or the Bank has paid to Mosser



or his associates either part or all of the $7,760,000 that it received in payment of oil production from the various leases, from January 1, 1969 to January 1, 1976.

7. Pursuant to provisions of Rule 36, the request for admission shall be admitted unless within thirty (30) days after service of these requests the Defendants, Harry J. Mosser Sr., and the Bank of the Southwest serves upon Plaintiff U. N. Industries, Inc., a written answer signed by the Defendants.

Dated at Chicago, Illinois
This September 23, 1977

U. N. INDUSTRIES, INC.,
Plaintiff
By /s/ *William Henning Rubin*
William Henning Rubin
One of its Attorneys

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